1942. K File No. 0. Factories/42

Legal DEPARTMENT

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Subject:—

Opinions under the Indian Factories Act, 1934.

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Submitted.

2. It seems that one of the directors of the Co. of Messrs. Chimnbhai Lalbhai and Brothers, Ltd. viz. Jasubhai Lalbhai was prosecuted as occupier of the Factory. "The Lalbhai Trikamlal Mills Ltd." was prosecuted for an offence under section 60(b)(i) read with sec.~~4z~~ in that he allowed the weaving shed to start work 18 minutes before the notified starting time. The accused was prosecuted relying on section 70(2) of the Factories Act. The accused was acquitted by the Magistrate. The District Magistrate, ~~xx~~ Ahmedabad, moved the R.L.A. for filing an appeal against acquittal but Government hold that the case was not fit one for appeal. The opinion of the G.P. H.C. that the case is not a fit case for appeal is at pages 253 to 255 of File Cr.AApp. 41. The Chief Inspector of Factories States that there is need for an examination of the Factories Act in so far as the 'occupiership' of the factory is concerned. In view of the decision in the Ahmedabad case, the Chief Inspector suggests that though section 70 of the Factories Act is helpful in many instances, it would be perhaps necessary to either drop the definition and the proviso to section 2(1) or the proviso alone or to provide in section 70 an overriding provision to prevent the escape of an occupier under the defence as put up in the Ahmedabad case. The

P.& S.D. have forwarded the papers to the R.L.A. for his remarks.

3. The word "occupier" of a factory is defined in clause (f) of section 2 of the Factories Act, 1934, as the person who has ultimate control over the affairs of the factory:provided that where the affairs of a factory are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory. Sub-section (2) of section 70 inter alia provides that where the occupier of a factory is a company, any one of the directors thereof may be prosecuted and punished under Chapter VI of the Act for any offence for which the occupier of the factory is punishable; provided that the Co. may give notice to the Inspector that it has nominated a director who is resident in British India, to be the occupier or the factory for the purposes of the Chapter and such director shall so long as he is so resident be deemed to be the occupier of the factory for the purposes of the Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director. The Chief Inspector of Factories states that no notice as required by the proviso to section 70(2) was given to the inspector and two of the 3 directors were absent from Ahmedabad and therefore the third was proceeded against. The defence produced the Memo. and Articles of Association of the Co. to show that one of the other brothers viz. Chimanlal Lalbhai was appointed as a Managing Agent. x x x x x .

Office of the R.L.A.

The factory - Lalbhai Trikamlal Mills Ltd. - had appointed Messrs. Chinubhai Lalbhai & Bros. Ltd. as its managing agent. Messrs. Chinubhai Lalbhai & Bros. Ltd. in turn appointed Chimanlal Lalbhai as managing agent presumably for all purposes including the exercise of ultimate control over the affairs of the Mill. Section 2(1) of the Factories Act, 1934, defines "occupier" as the person who has ultimate control over the affairs of the factory. The proviso to this section states that where the affairs of a factory are entrusted to a managing agent, such agent shall be deemed to be the occupier. Now in the present case the affairs of the factory were entrusted in the first instance to Messrs. Chinubhai Lalbhai and Bros. as managing agents, and subsequently (by the latter) to Chimanlal Lalbhai. The proviso is, it may be noted, worded in the passive, so that the entrustment need not necessarily be by the factory. On the facts as they stand, Chimanlal Lalbhai was virtually the managing agent in ultimate control of the affairs of the factory and was therefore the occupier within the meaning of section 2(1) and it is he who should have been or should be prosecuted for the breach in question. In case the Factory Department thinks that in cases of this type not merely the last appointed managing agent but also any one of the directors of the Company which has been appointed the managing agent of the factory should be made liable to prosecution as provided in section 70(2), in view of the

passive wording of the proviso to section 2(1) and the fact that the trial in question was a summary one, it would be desirable to await another adverse decision in a regular and fully argued case which could, if necessary, be taken to the High Court for an authoritative decision, before considering the question of amending the Act.

Sd. P.N.Bose,
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Remembrancer of Legal Affairs.

U.R.to P.& S.D., No.2953, dated the 6th April 1943.

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